

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. RPU-00-1 (TF-00-64)
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**ORDER DOCKETING TARIFF, GRANTING INTERVENTION,
ESTABLISHING PROCEDURAL SCHEDULE, AND
WAIVING 199 IAC 7.7(16)**

(Issued April 14, 2000)

On March 15, 2000, U S WEST Communications, Inc. (U S West), filed a proposed tariff identified as TF-00-64 in which U S West proposes to deaverage its wholesale and retail rates in Iowa. Pursuant to rules adopted by the Federal Communications Commission (FCC), states, in arbitration proceedings, are required to establish geographically deaveraged rates for unbundled network elements (UNEs) (U S West's "wholesale" rates) by May 1, 2000. See 47 C.F.R. § 51.507(f). U S West asserts that wholesale and retail rates should be deaveraged at the same time, using the same rate group structure, to avoid pricing anomalies and disparities.

U S West proposes that the unbundled loop UNE and certain retail rates should be deaveraged into three geographic zones, or rate groups, as described in its proposal.

On April 3, 2000, Goldfield Access Network, L.C. (Goldfield), filed an objection to the U S West tariff, arguing that U S West's proposed tariff revisions are unjust and unreasonable in violation of Iowa Code § 476.8 and in violation of Sections 252

through 254 of the federal Communications Act. Goldfield asks the Board to reject U S West's tariff filing or, in the alternative, to suspend the tariff and set the matter for hearing. Goldfield also asks the Board to commence a new rule making proceeding to establish statewide rules for deaveraging UNEs.

On April 4, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to TF-00-64 and a request for docketing. Consumer Advocate points out that U S West is currently providing retail service pursuant to a price regulation plan authorized by Iowa Code § 476.97 and approved by the Board on September 28, 1999. U S West provides UNEs at rates established in proceedings conducted pursuant to Iowa Code § 476.101(4)"a" and 199 IAC 38.4. Consumer Advocate argues that U S West's price plan prohibits some of the proposed retail price increases in TF-00-64. Consumer Advocate also argues that U S West has failed to demonstrate its proposed wholesale costing methodology complies with applicable federal law. Accordingly, Consumer Advocate asks the Board docket TF-00-64 as a formal contested case proceeding and establish a procedural schedule for resolution of the issues associated with the filing.

Also on April 4, 2000, AT&T Communications of the Midwest, Inc. (AT&T), filed an objection to U S West's proposal and a request to docket the proposal for hearing. AT&T agrees with some aspects of U S West's proposal, but AT&T objects to the Board setting permanent deaveraged wholesale rates at this time. AT&T requests that the Board docket the U S West filing, allow the proposed wholesale

rates to become effective as interim rates, subject to refund, and allow AT&T to participate as a party in this case.

On April 12, 2000, U S West filed a response to the Consumer Advocate, AT&T, and Goldfield objections. U S West argues that the Board should reject all of the objections and approve U S West's tariff filing. In the alternative, U S West submits the Board should docket the filing as a formal proceeding and set it for hearing on an expedited basis. U S West resists AT&T's suggestion that the proposed wholesale rates should be implemented on an interim basis, subject to refund.

U S West argues the Board is not required to use rule making proceedings to establish deaveraged UNE prices, noting that rule making is only appropriate when addressing issues of general applicability. In this matter, the focus should be on U S West's specific costs and rates, which are not applicable to any other telecommunications carrier in the state.

In response to Consumer Advocate, U S West argues its Iowa price regulation plan allows for pricing changes that are required by exogenous factors and specifically provides that a proceeding to deaverage rates for UNEs may be considered an exogenous factor.

U S West responds to some of the other arguments raised by AT&T and Goldfield. However, U S West also points out that these issues can best be resolved by docketing the filing as a formal proceeding and hearing evidence and argument from the parties. The Board agrees.

To allow the Utilities Board (Board) time to fully consider the proposed increase, the tariffs will be docketed as a formal proceeding identified as Docket No. RPU-00-1 and an expedited procedural schedule will be established. The Board will grant AT&T's request to participate as a party in this proceeding. While Goldfield filed an objection, it did not request intervention in this docket. If Goldfield intends to participate, it should file a petition to intervene.

The Board is not, at this time, deciding the question of whether the proposed retail price changes qualify for the exogenous factor exception to U S West's price regulation plan. The Board will treat Consumer Advocate's objection on this issue as a motion to dismiss. The parties may file briefs on this issue as provided in the schedule below.

By docketing this matter as a contested case, the Board is rejecting Goldfield's argument that it must deaverage UNE rates through a rule making proceeding. The Board agrees with U S West that general rule making is an inappropriate procedure for setting rates based on company-specific costs.

The Board also rejects the Goldfield and AT&T proposals to establish interim wholesale rates (at different levels). Iowa Code § 476.6(13) gives the Board authority to set temporary rates while a case is pending. That statute requires that temporary rates be based on previously established regulatory principles. As the Board has never set geographically-deaveraged UNE rates before, the Board has no previously-established principles to apply. Therefore, the Board declines to set temporary rates in this docket.

The Board is establishing an expedited procedural schedule in this docket. If no delays are encountered, the schedule will be completed over six weeks faster than the normal rate case schedule under 199 IAC 7.7(14). In order to accomplish this schedule, the Board will waive 199 IAC 7.7(16), which would otherwise require consumer comment hearings. Based on the existing record, the Board finds that such hearings are not likely to be of material assistance to the Board in deciding the technical issues in this case. However, the Board may revisit this waiver decision if subsequent events indicate consumer comment hearings may be beneficial.

Finally, it is clear that even with an expedited schedule the Board cannot take final action in this matter in time to implement geographically-deaveraged UNE prices by May 1, 2000, as required by 47 C.F.R. § 51.507(f) and the FCC's "Ninth Report And Order And Eighteenth Order On Reconsideration" in The Matter Of Federal-State Joint Board On Universal Service, FCC Docket No. 96-45 (Nov. 1999). The Board will file with the FCC a petition for a limited waiver of that deadline to allow time to conduct this proceeding in an expeditious and efficient manner.

IT IS THEREFORE ORDERED:

1. An investigation is instituted to determine the reasonableness of U S West's proposed tariff, identified as TF-00-64. This matter will be identified as Docket No. RPU-00-1, a formal contested case proceeding. Tariff filing TF-00-64 is suspended. The expenses reasonably attributable to this investigation shall be assessed, as appropriate, to U S West and the other parties in accordance with Iowa Code §§ 476.10 (1999) and 476.101(10) (1999 Supp.).

2. The following procedural schedule is established:

a. Parties wishing to file briefs concerning the possible effect of U S West's price regulation plan on U S West's proposed retail price changes may file initial briefs on or before April 24, 2000, and reply briefs on or before May 8, 2000.

b. The parties shall notify the Board prior to June 26, 2000, if they desire a prehearing conference.

c. Consumer Advocate and any intervenors shall file prepared direct testimony, with underlying workpapers and exhibits, on or before June 26, 2000. If a party refers to a data request in its prepared testimony, the data request shall be filed as an exhibit.

d. If Consumer Advocate and any intervenors find it necessary to file testimony in rebuttal to each other's direct testimony, they may file rebuttal testimony on or before July 17, 2000.

e. U S West shall file its rebuttal testimony, with underlying workpapers and exhibits, on or before August 14, 2000.

f. Consumer Advocate and any intervenor shall file rebuttal testimony on any of issues raised initially in that party's direct testimony and responded to by another party, on or before August 28, 2000.

g. The parties shall file a joint statement of the issues on or before September 4, 2000.

h. All parties which choose to file a prehearing brief may do so on or before September 7, 2000.

i. A hearing shall be held beginning at 10 a.m. on September 26, 2000, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Board's Hearing Room at 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

j. The parties may file simultaneous initial briefs on or before October 9, 2000.

k. All parties who filed initial briefs may file reply briefs on or before October 16, 2000.

3. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination which have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

5. In the absence of objection, when the Board has called for further evidence on any issue and the evidence is filed after the close of the hearing, the evidentiary record will be reopened and the evidence will become part of the record five days after the evidence is filed with the Board. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing in this proceeding.

6. The Board waives 199 IAC 7.7(16) as applied to this docket, for the reasons stated in the body of this order.

7. The petition to intervene filed by AT&T Communications of the Midwest, Inc., on April 4, 2000, is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 14th day of April, 2000.